

March 9, 2018

VIA ELECTRONIC FILING

Ms. Jocelyn Boyd
Chief Clerk & Administrator
Public Service Commission of South Carolina
Synergy Business Park, Saluda Building
101 Executive Center Drive, Suite 100
Columbia, SC 29210

Re: Application of Airus, Inc.
Docket No. 2017-363-C

Dear Ms. Boyd:

Enclosed for filing please find the proposed order on behalf of Airus, Inc. in the referenced matter. By copy of this letter we are serving the parties of record.

Should there be any questions about this filing please contact us.

Yours truly,



Frank R. Ellerbe, III

FRE:tch

Enclosure

cc w/enc: David Butler, Hearing Examiner (via email)
C. Lessie Hammonds, Esquire (via email)
Margaret M. Fox, Esquire (via email)

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

Docket No. 2017-363-C – ORDER NO. 2017-_____

March _____, 2017

IN RE:

Application of Airus, Inc. for a Certificate of
Public Convenience and Necessity to Provide
Facilities-based Local Exchange and Resold
Long Distance Telecommunications Services
and for Flexible Regulation of its Local
Exchange Services and Alternative Regulation
of its Long Distance Service Offerings Within
the State of South Carolina

Proposed
ORDER GRANTING
CERTIFICATE AND APPROVING
FLEXIBLE AND ALTERNATIVE
REGULATION

This matter comes before the Public Service Commission of South Carolina (the “Commission”) by way of the Application of Airus, Inc. (“Airus” or the “Company”) requesting a Certificate of Public Convenience and Necessity authorizing it to provide resold and facilities-based local exchange and interexchange telecommunications services within the State of South Carolina. The Company’s Application was filed pursuant to S.C. Code Ann. § 58-9-280(B), as amended, Section 253 of the Telecommunications Act of 1996, and the rules and regulations of the Commission. By its Application, Airus also requests flexible regulation of its local exchange service offerings pursuant to Order No. 98-165 in Docket No. 1997-467-C and alternative regulation of its interexchange services consistent with Commission Orders, and waivers of certain Commission regulations.

The Commission’s Clerk’s Office instructed Airus to publish a one-time Notice of Filing in newspapers of general circulation in the areas of the state affected by the Application. The

purpose of the Notice of Filing was to inform interested parties of the Application of Airus and of the manner and time in which to file the appropriate pleadings for participation in the proceeding. Airus complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. A Petition to Intervene was filed by the South Carolina Telephone Coalition (“SCTC”). Subsequent to the intervention, the Company and SCTC reached a Stipulation, attached and incorporated by reference as Order Exhibit 1.

On February 13, 2018, counsel for the South Carolina Office of Regulatory Staff (“ORS”) filed a letter with the Commission setting out that it had reviewed the Application and did not oppose the Commission granting the Application. The ORS also sought permission to be excused from the hearing in the Docket. The Applicant did not object to the ORS request. The Hearing Examiner granted the ORS request to be excused from the hearing by Order No. 2018-20-H, dated February 13, 2018.

A hearing on the Application was held on February 26, 2018 at 2 p.m. in the offices of the Commission in Columbia, South Carolina, before David Butler, Hearing Examiner. Airus was represented by Frank R. Ellerbe, III, Esquire. SCTC did not appear at the hearing.

John McCluskey, acting General Manager for the Company, appeared by videoconference and testified in support of the Application. The record reveals that Airus is a Delaware corporation registered as a foreign corporation with the South Carolina Secretary of State. According to Mr. McCluskey, the Company seeks authority to operate as a provider of facilities-based and resold local exchange and resold long-distance services. Mr. McCluskey explained the Company’s request for authority, and the record further reveals the Company’s services and operations.

Mr. McCluskey also discussed Airus' technical, financial and managerial resources to provide the services for which it seeks authority. Mr. McCluskey offered that Airus is financially able to support its operations in South Carolina. With regard to management and technical capabilities, the Company's Application and Mr. McCluskey's testimony both support the conclusion that Airus' management team has extensive experience in the telecommunications industry that will allow it to be a successful telecommunications carrier with the State of South Carolina. Mr. McCluskey also testified that Airus will operate in accordance with Commission rules, regulations, guidelines, and Commission Orders.

The Company requests a waiver of S.C. Code Ann. Regs. 103-610 since the Company's books are maintained at its headquarters in Chicago, Illinois. Further, the Company requests an exemption from record keeping policies that require maintenance of financial records in conformance with the Uniform System of Accounts ("USOA"). Airus maintains its books in accordance with Generally Accepted Accounting Principles ("GAAP"). In addition, the Company requests a waiver of S.C. Code Ann. Regs. 103-612.2.3's requirement that it file a map since it seeks statewide certification. Finally, Airus seeks a waiver of S.C. Code Ann. Regs. 103-607 that it post a bond since Airus does not intend to provide residential local exchange services at the present time.

After full consideration of the applicable law, the Company's Application, and the evidence represented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. Airus was formed as Delaware Corporation and is registered as a foreign corporation authorized to do business in South Carolina by the Secretary of State.

2. Airus has no reported record of violations of regulatory laws or regulations in the jurisdictions in which it is currently operating.

3. Airus desires authority to operate as a provider of facilities-based and resold local exchange and resold long-distance services in South Carolina.

4. We find that Airus possesses the managerial experience and capability to operate as a provider of facilities-based or resold local exchange and interexchange services in South Carolina.

5. We find, based on a review of the financial statements and the testimony submitted at the hearing, that Airus possesses sufficient financial resources to provide the services as described in its Application and testimony.

6. We find that the issuance of a Certificate of Public Convenience and Necessity to Airus to operate as an interexchange and local exchange telecommunications service provider in South Carolina would be in the best interest of the citizens of South Carolina by increasing the level of competition in South Carolina, by providing an alternative source for telecommunications services, and by maximizing customer savings, lowering unit costs and improving customer service.

7. Airus currently maintains its books and records in Illinois and requests a waiver of S.C. Code Ann. Regs. 103-610. The Commission finds Airus' requested waiver reasonable and understands the potential difficulty presented to Airus should the waiver not be granted. Further,

we find that a waiver of S.C. Code Ann. Regs. 103-610 is in the public interest. We also believe that exemption from the policies that would require the Company to keep its records under the USOA is reasonable.

8. We also find that a waiver of the requirement to file operating maps pursuant to S.C. Code Ann. Regs. 103-612.2.3 is reasonable since the Company seeks statewide authority.

9. Since Airus does not intend to provide retail residential local exchange services, we find that it is appropriate and reasonable to waive S.C. Code Ann. Regs. 103-607.

10. The Company has the managerial, technical, and financial resources to provide the serves as described in its Application. S.C. Code Ann. § 58-9-280(B)(1) (Supp. 2015).

11. The Commission finds that the Company's "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. § 58-9-280(B)(3) (Supp. 2015).

12. The Commission finds that the Company will support universally available telephone service at affordable rates. S.C. Code Ann. § 58-9-280(B)(4) (Supp. 2015).

13. The Commission finds that services to be provided by the Company will meet the service standards of the Commission. S.C. Code Ann. § 58-9-280(B)(2) (Supp. 2015).

14. The Commission finds that the provision of local exchange service by the Company "does not otherwise adversely impact the public interest." S.C. Code Ann. § 58-9-280(B)(5) (Supp. 2015).

15. Following execution of a Stipulation with intervenor SCTC, the SCTC withdrew its objection to the Application.

16. The ORS was permitted to be excused from the hearing and the fact that it did not oppose the granting of the Application herein is duly noted.

CONCLUSIONS OF LAW

1. The Commission concludes that Airus possesses the managerial, technical, and financial resources to provide the telecommunications services as described in its Application.

2. The Commission concludes that the Company will participate in the support of universally available telephone service at affordable rates to the extent that the Company may be required to do so by the Commission.

3. The Commission concludes that the Company will provide services which will meet the service standards of the Commission.

4. The Commission concludes that approval of Airus' Application to provide intrastate telecommunications services within South Carolina will serve the public interest by enhancing competition in the State of South Carolina, by offering additional service offerings to South Carolina's consumers, and by providing for efficient use of existing telecommunications resources.

5. The Commission concludes that the provision of telecommunications service by Airus will not adversely impact the public interest.

6. The Commission concludes that the issuance of the authority to provide intrastate local exchange and interexchange telecommunications services as requested by Airus and as set forth in its Application and Mr. McCluskey's testimony is in the best interests of the citizens of the State of South Carolina.

7. The Commission concludes that a Certificate of Public Convenience and Necessity should be granted to Airus to provide facilities-based and resold local exchange and interexchange telecommunications services within South Carolina.

8. Should Airus offer residential interexchange services in the future, the Commission adopts a rate design for Airus for its residential interexchange services which includes maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. *In Re: Application of GTE Sprint Communications Corporation*, Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

9. Should Airus offer residential interexchange services in the future, Airus shall not adjust its residential interexchange rates below the approved maximum level without notice to the Commission and to the public. Airus shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. *In Re: Application of GTE Sprint Communications*, Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for residential interexchange services reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. § 58-9-540 (Supp. 2015).

10. The Commission concludes that Airus' intrastate interexchange business telecommunications services shall be regulated in accordance with the principles and procedures established for alternative regulation of business service offerings set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. The Commission has previously granted this "alternative regulation" to competitive intrastate interexchange carriers operating within South Carolina, and the Commission concludes that the competitive marketplace requires the Commission to allow this flexible regulation to those carriers which request it. Specifically, the Commission-approved alternative regulation allows business service offerings, including consumer card services and operator services, to be subject to a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. However, pursuant to Order No. 2001-997 (Docket No. 2000-407-C), this Commission has modified alternative regulation by the re-imposition of rate caps with regard to certain "operator-assisted calls" where a customer uses a local exchange carriers calling card to complete calls from locations which have not selected that local exchange carrier as the toll provider. Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of \$1.75 for operator surcharges for such calls, and a maximum cap of \$.035 related to the flat per-minute rate associated with these calls. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing. The Commission will have seven (7) days in which to institute an investigation of any tariff filing. If the Commission institutes an investigation of a particular tariff filing within the seven days, the tariff filing will then be suspended until further Order of the Commission.

11. The Commission concludes the Company's local exchange telecommunications services shall be regulated in accordance with the principles and procedures established for flexible

regulation first granted to NewSouth Communications by Order No. 98-165 in Docket No. 97-467-C. Specifically, the Commission adopts for the Company's competitive intrastate local exchange services a rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels approved by the Commission. Further, the Company's local exchange service tariff filings are presumed valid upon filing, subject to the Commission's right within thirty (30) days to institute an investigation of the tariff filing, in which case the tariff filing would be suspended pending further Order of the Commission. Further, any such tariff filings will be subject to the same monitoring process as similarly situated competitive local exchange carriers.

12. We conclude that Airus' request for waiver of S.C. Code Ann. Regs. 103-610 should be granted as strict compliance with the regulation would cause undue hardship on Airus. We also grant exemption from the policies requiring use of USOA. In addition, we grant waiver of S.C. Code Ann. Regs. 103-612.2.3 and 103-607.

13. The Stipulation between Airus and SCTC should be approved.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

1. A Certificate of Public Convenience and Necessity should be granted to Airus to provide intrastate local exchange and interexchange telecommunications services within the State of South Carolina.

2. The Company's rate designs for its products shall conform to those designees described in the Conclusions of Law above.

3. If it has not already done so by the date of issuance of this Order, the Company shall file its revised tariff and an accompanying price list for any applicable rates within 30 days

of receipt of this Order. The revised tariff should be electronically filed in a text searchable PDF format using the commission's DMS system (<http://dms.psc.sc.gov>). An additional copy should be sent via email to etariff@psc.sc.gov to be included in the Commission's ETariff System (<http://etariff.psc.sc.gov>). Future revisions to the tariff should be made using the ETariff System. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations.

4. The Company's service is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers and facilities-based interexchange carriers should be treated similarly.

5. With regard to the Company's resale of service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

6. Airus shall resell the services of only those interexchange carriers or local exchange carriers ("LECs") authorized to do business in South Carolina by this Commission.

7. With regard to the origination and termination of toll calls within the same LATA, Airus shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the FCC pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209). Specifically, Airus shall comply with the imputation standard as adopted by Order No. 93-462 and more fully described in paragraph 4 of the Stipulation and Appendix B approved by Order No. 93-462.

8. Airus shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipt report will necessitate the filing of intrastate information. Therefore, Airus shall keep financial records on an intrastate basis for South Carolina to comply with the annual report and gross receipts filings. The proper form for filing annual financial information can be found at the ORS's website at www.regulatorystaff.sc.gov. The title of this form is "Telecommunications Company Annual Report." This form shall be utilized by the Company to file annual financial information with the Commission and ORS and shall be filed no later than **April 1st**.

9. Commission gross receipts forms are due to be filed with the Commission and ORS no later than **August 31st** of each year. The proper form for filing gross receipts information can be found at the ORS website at www.regulatorystaff.sc.gov, and the appropriate form is entitled "Gross Receipts Form."

10. Each telecommunications company certified in South Carolina is required to file annually with the ORS the South Carolina Universal Service Fund ("USF") Contribution worksheet, which may be found on the ORS's website at www.regulatorystaff.sc.gov. This worksheet provides ORS information required to determine each telecommunications company's liability to the State USF fund. The Intrastate USF worksheet is due to be filed annually no later than **August 1st** with the Commission and ORS.

11. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission and ORS in writing the name of the authorized

representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. Airus shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The “Authorized Utility Representative Information” form can be found at the ORS’s website at www.regulatorystaff.sc.gov; this form shall be utilized for the provision of this information to the Commission and ORS. Further, the Company shall promptly notify the Commission and ORS in writing if the representatives are replaced.

12. The Company is directed to comply with all Rules and Regulations of the Commission unless a regulation is specifically waived by the Commission.

13. Airus requested a waiver of S.C. Code Ann. Regs. 103-610, which requires the Company to maintain its financial books and records within the State of South Carolina. Airus is granted permission to maintain its financial books and records at its principal headquarters provided that Airus makes its books and records available for examination upon request by the ORS. Further, the Commission acknowledges that Airus shall maintain its financial records in conformance with GAAP. Airus is directed to comply with all Rules and Regulations of the Commission unless a regulation is specifically waived by the Commission. Airus is also granted a waiver of the requirement to file a map pursuant to S.C. Code Ann. Regs. 103-612.2.3. Finally, we waive the requirement that Airus file a bond pursuant to S.C. Code Ann. Regs. 103-607 until such time as Airus provides retail residential local exchange service in South Carolina.

14. Airus is required to comply with Title 23, Chapter 47 of the South Carolina Code Annotated, which governs the establishment and implementation of a “Public Safety Communications Center,” which is more commonly known as a “911” system or “911 service.”

Services available through a 911 system include law enforcement, fire, and emergency medical services. In recognition of the necessity of quality 911 services being provided to the citizens of South Carolina, the commission hereby instructs Airus to contact the appropriate authorities regarding 911 services in the counties and cities where the Company will be operating, should the Company become interconnected to the public switched telephone network. Contact with the appropriate 911 service authorities is to be made before beginning local telephone service in South Carolina. . By this Order and prior to providing local telephone services in South Carolina, Airus shall contact the 911 coordinator in each county (and city where the city has its own 911 system) and shall provide information regarding the Company's operations as required by the 911 system.

15. The Stipulation between the SCTC and Airus is hereby approved.

16. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Swain E. Whitfield, Chairman

ATTEST:

Comer H. "Randy" Randall, Vice Chairman

(SEAL)